

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Re-examination of Roaming	)	WT Docket No. 05-265
Obligations of Commercial	)	
Mobile Radio Service Providers	)	
	)	
Automatic and Manual Roaming	)	WT Docket No. 00-193
Obligations Pertaining to	)	
Commercial Mobile Radio	)	
Services	)	

**REPLY COMMENTS OF SUNCOM WIRELESS, INC.**

SunCom Wireless, Inc. ("SunCom") hereby submits these reply comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned docket. 1/ Nationwide access to automatic roaming has become a base-level expectation of consumers in the wireless marketplace, regardless of the size of their carrier. To date, SunCom has been able to satisfy consumer demands for automatic roaming services through agreements with a number of roaming partners. As all carriers aggressively develop and deploy the next generation of broadband data and other enhanced services, however, SunCom is concerned that nationwide carriers will be reluctant or unwilling to enter into similar agreements providing consumers with roaming access to advanced data and other enhanced services. It is essential for consumers and vital to market competition that small, regional, and rural carriers be able to provide reliable roaming access to these next-generation services.

The Commission should protect consumers by adopting rules that will allow smaller carriers to continue to compete with the nationwide carriers, particularly with regard to next generation data and enhanced services. Certainly, all carriers must be prepared to invest in

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1/ See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, WT Docket No. 00-193, *Memorandum Opinion & Order and Notice of Proposed Rulemaking*, FCC -5-160 (August 31, 2005) ("NPRM").

new technology and facilities in order satisfy evolving consumer demands. But once they do so, the Commission must provide a regulatory environment that prohibits consolidated nationwide carriers from using their unrivaled market power to the disadvantage of smaller carriers' customers. Specifically, the Commission should adopt and aggressively enforce automatic voice and data roaming rules that will ensure the availability of reasonable roaming access to next-generation data and other advanced wireless services.

As many commenters have noted, the wireless marketplace has witnessed unprecedented consolidations and mergers between many of the nation's largest wireless carriers in recent years. As the networks of the few remaining nationwide carriers grow, their reliance upon the networks of smaller carriers decreases. The combination of these factors – a decreasing number of nationwide carriers, each of which have rapidly expanding networks, and an increasing consumer demand for next generation data and other enhanced services – has made it absolutely critical for smaller carriers to have guaranteed access to reasonably priced automatic roaming agreements that include provisions for next-generation services.

**I. THE COMMISSION SHOULD CREATE AN AUTOMATIC ROAMING RULE THAT GUARANTEES ALL CONSUMERS ACCESS TO NEXT-GENERATION COMMUNICATIONS SERVICES.**

The Commission must intervene to ensure that all wireless consumers are able to receive reasonable access to next-generation communications services. Numerous small, regional and rural carriers have already argued for the need to establish an automatic roaming rule. <sup>2/</sup> SunCom generally agrees, noting that, in order to be effective, any such rule should include an obligation to offer reasonable rates and to negotiate terms and conditions in good faith with roaming partners. More importantly, the Commission's roaming rules should focus on the need to ensure that consumers have automatic roaming access to compatible data and

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<sup>2/</sup> See, e.g., comments of Leap Wireless at 17-21; comments of NTCH at 6-9; joint comments of AIRPEAK Communications and Airtel Wireless at 8-9; comments of Rural Telecommunications Group at 14-16; comments of Centennial Communications at 12-13; comments of Rural Cellular Association at 4-7; comments of MetroPCS at 21-23.

enhanced wireless services. The Commission should encourage an active and competitive market for roaming services in markets where multiple carriers have technically compatible next-generation networks, and should protect smaller carriers from monopoly or oligopoly pricing in markets where there is only one, or only very few, viable roaming partners.

**A. Next-Generation Data And Other Enhanced Services Are Essential To Consumers.**

In order to remain competitive, all wireless carriers must be able to satisfy consumer demand for next-generation data and other enhanced services. Just as nationwide voice roaming capabilities are essential to consumers in the current marketplace, nationwide roaming access to next-generation services, like wireless broadband internet access, are essential to consumers moving forward. Most GSM carriers are investing or will invest an enormous amount of money developing and deploying 3G UMTS services in order to meet the future needs of their wireless customers. Nationwide carriers can more easily absorb the cost of these investments, and have the network resources to ensure that the services are available nationwide to meet customers' demands. Smaller carriers, on the other hand, must build the network facilities to provide these services in order to remain competitive, but currently have no assurances that these services will be available to consumers outside of their own networks.

As a result, in the absence of next-generation data roaming obligations, smaller carriers are faced with an untenable decision: invest in technological upgrades that will provide customers with data and other enhanced services, and run the risk that these new services will be unmarketable due to the limited availability of automatic roaming access; or refrain from upgrading and be rendered obsolete by larger carriers with nationwide networks more capable of generating a return on such investments without roaming agreements. In order to encourage investment and protect competition going forward, the Commission must provide assurances to smaller carriers that once they have deployed next-generation services,

their customers will have reasonable access to data roaming services on compatible carriers' networks.

SunCom encourages the Commission to pay particular attention to the comments of ACS Wireless, Inc. ("ACS") in this regard. Like SunCom, ACS, a leading wireless communications provider in Alaska, has established nationwide automatic roaming agreements that allow its customers to access reliable voice services when they travel outside of their local market. ACS has also invested in and deployed EV-DO facilities, "the fastest and most complete wireless data service in the market today." <sup>3/</sup> Nevertheless, to date, ACS has been unsuccessful in negotiating a single roaming agreement with nationwide carriers for EV-DO services – despite the fact that neither of the technically compatible carriers they have contacted compete in the Alaska market. ACS's experience is a reflection of the changing market conditions discussed above, and a clear indicator of the risks associated with smaller carriers investing in next-generation facilities. Absent regulation, small, regional, and rural wireless carriers stand at an enormous – if not insurmountable – competitive disadvantage in providing next-generation services to consumers. <sup>4/</sup>

**B. Market Forces Will Discourage Nationwide Carriers From Providing Roaming Access to Next-Generation Services.**

SunCom agrees with the comments of U.S. Cellular that, in many instances, nationwide carriers have been reasonable in negotiating automatic voice roaming agreements with smaller carriers. Indeed, SunCom currently offers consumers competitive plans complete with reliable nationwide roaming services. However, market incentives are

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<sup>3/</sup> See comments of ACS Wireless at 4.

<sup>4/</sup> Indeed, the market forces facing smaller carriers attempting to build next-generation networks today are the same conditions that persuaded the Commission to extend the manual roaming rule to other CMRS services in the 1996 *Interconnection and Resale Obligations Second Report and Order*. Specifically, the Commission was concerned that market forces alone might not be sufficient to cause manual roaming services to become available while the CMRS networks were being constructed. *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9464 ¶2, 9468-70 ¶¶10-11.

changing rapidly in light of recent mega-mergers between many of the nation's largest wireless carriers. Given the limited number of potential GSM roaming partners for next-generation services, if even one nationwide carrier were to demand unreasonable automatic roaming fees or, worse, were to refuse to allow SunCom customers to automatically roam on their next-generation networks, the impact on SunCom and its customers could be severe. The lack of any regulatory obligation for nationwide carriers to offer automatic voice and data roaming services decreases consumer confidence, dampens incentives for smaller carriers to invest in next-generation services, and ultimately harms consumers.

It is important for the Commission to act prior to the upcoming AWS auction. If the nationwide carriers significantly expand their capacity to provide next-generation services by investing in new spectrum, their need to roam on the next-generation networks of smaller carriers – and their corresponding willingness to provide reasonably priced roaming access to their own next-generation networks – will be reduced even further. By establishing these rules now, both nationwide and smaller carriers will have a more complete understanding of how to approach their investment in AWS spectrum. The Commission should not encourage the aggregation of AWS spectrum in the hands of the few nationwide carriers without first ensuring that this new spectrum will not be used in a manner that decreases consumer access to next-generation wireless services.

**C. The Commission Should Establish A Complaint Process to Resolve Disputes Regarding Automatic Roaming Agreements.**

SunCom agrees with commenters that emphasize the need for carriers to quickly resolve conflicts regarding roaming negotiations. <sup>5/</sup> Carriers should be required to attempt to resolve conflicts privately prior to seeking intervention by the Commission, but a complaint process should be established to protect carriers where necessary. In reviewing a roaming

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<sup>5/</sup> See, e.g., comments of U.S. Cellular at 8; comments of MetroPCS at 26; comments of Centennial Communications at 13.

dispute, the Commission should consider a carrier's costs of providing roaming service as well as the comparable charges for roaming access charged to other carriers, affiliates, and to the carrier's own customers in the same market.

In establishing a complaint process, however, the Commission should take steps to ensure that nationwide carriers do not use complaint procedures as an opportunity to unreasonably delay roaming access to the customers of competing carriers. The Commission should express a willingness to fine any carrier upon finding that the carrier negotiated in bad faith for roaming access. Absent a credible threat of fines, a nationwide carrier that does not want to enter into roaming agreements has no incentive to negotiate in good faith; the cost of exercising the complaint procedures will be more burdensome for smaller carriers than it will for larger carriers, and the delay in receiving roaming access will directly harm consumers. Finally, the Commission should consider establishing a default framework to be used while a formal complaint is pending adjudication in order to ensure that customers are not burdened by service interruptions while a dispute is pending.

## **II. A RULE THAT PROVIDES ALL CONSUMERS WITH REASONABLE ACCESS TO NEXT-GENERATION SERVICES IS CONSISTENT WITH THE COMMISSION'S GOALS.**

The Commission has long recognized that consumers "benefit from competition in the CMRS marketplace," and that the widespread availability of roaming services has played an important role in the development of that competition and the current strength of the wireless market. <sup>6/</sup> This same rationale holds true for the provision of next-generation services. The Commission's goals of encouraging competition and protecting consumers will be furthered by guaranteeing customers of all carriers access to these services.

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<sup>6/</sup> *NPRM*, at ¶12; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, WT Docket No. 05-71, *Tenth Report*, FCC 05-173, ¶204 (rel. Sept. 30, 2005) ("*Tenth Annual Report*").

Some commenters have posited that an automatic roaming rule harms consumers by eliminating service distinctions between carriers. <sup>7/</sup> This argument misrepresents the current wireless market. Nationwide automatic roaming – once a premium service associated with few wireless carriers – is now a base-level service expectation of most, if not all, wireless consumers. It is unreasonable to contend that consumers would benefit from service differences in the availability of nationwide automatic roaming access to next-generation services. Consumers will continue to choose between various services based on a number of factors, including the quality of a carrier’s in-market coverage, pricing plans, customer service, and the selection of compatible handsets available. Applying an automatic roaming rule to next-generation data and other enhanced services will not undermine the ability of service providers to differentiate themselves; all carriers will still have to invest in next-generation facilities in order to offer next-generation services. An automatic data roaming rule would create a level playing field for roaming access and allow all carriers to concentrate more resources on developing new and unique services, better service quality, and competitive pricing plans. Moreover, it would protect consumer confidence in smaller carriers and forestall the continued consolidation of market powers in the hands of a few nationwide carriers.

### **III. SPECIFIC RESPONSES TO OTHER ISSUES RAISED IN THE WIRELESS ROAMING COMMENTS.**

#### **A. The Commission Should Not Prohibit Preferential Agreements At This Time.**

SunCom believes that it would be premature for the Commission to adopt a rule regarding preferential arrangements at this time. Such agreements create opportunities for strategic and market-specific alliances between different carriers. For example, two regional carriers may choose to enter into a reciprocal preferential roaming agreement with a neighboring regional carrier in order to increase roaming traffic on both carriers’ networks,

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<sup>7/</sup> See, e.g., comments of Cingular Wireless at 26.

rather than sending all roaming traffic to a nationwide carrier that provides little or no roaming traffic to either carrier in return.

**B. Carriers Should Be Required to Make Reasonable Accommodations For The Technical Needs of Roaming Partners.**

SunCom agrees with the concern expressed by U.S. Cellular that a roaming rule that includes a technical compatibility requirement could be used to pernicious effect; the deployment of next-generation technologies should not become an excuse to prohibit reasonable roaming access for basic services or to restrict roaming between next-generation services that are nearly identical. <sup>8/</sup> The Commission should encourage technology upgrades, but must also recognize that all carriers will not upgrade at the same pace in every market. When reasonable, carriers should be required to maintain the availability of their networks for the basic roaming needs of existing roaming partners (*i.e.*, for voice services) while upgrading their networks to provide expanded or enhanced services. Moreover, carriers should be prohibited from creating unnecessary technical hurdles to restrict or prevent roaming access for next generation data and other enhanced services.

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<sup>8/</sup> See comments of U.S. Cellular at 14-15.

### **Conclusion**

For the foregoing reasons, SunCom recommends that the FCC adopt automatic roaming rules which: i) requires all carriers to provide automatic roaming access to next-generation voice, data, and other enhanced services to the customers of other carriers upon request; ii) requires carriers to negotiate the terms and conditions of automatic roaming agreements in good faith; and iii) provides complaint procedures for carriers that believe they have been treated unfairly in the negotiation or implementation of such automatic roaming agreements. SunCom believes that viable competition for next-generation services will be possible in the consolidated wireless market if the Commission acts promptly.

Respectfully submitted,

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